

REMARKS

The present invention is directed to immunogenic compositions comprising fibroblast growth factor ("FGF") and/or vascular endothelial growth factor ("VEGF"), to methods for treating cancer or hyperproliferative disorders in humans or animals, and also to methods for treating humans or animals in need of an immune response to a growth factor.

Claims 5-13, 15, 17-23 and 25-29 and 50 are currently pending. In response to the Office Action dated October 3, 2003 and in order to facilitate prosecution, **Claim 5 is herein amended**. Claims 30-49 are canceled herein as drawn to non-elected inventions. No new matter has been added and support for the claims is found in the specification. Applicants submit the following remarks in an effort to address the rejections raised in the Office Action.

Rejection of Claims 5-13 under 35 U.S.C. §112, first paragraph

In the October 3, 2003 Office Action, the Examiner rejected claims 5-13, 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors at the time of the application was filed, had possession of the claimed invention. More specifically, the Examiner stated that by applicants' previous amendment, the negative limitation, to exclude the amino acid sequence of SEQ ID NO: 2, is not supported by the specification. According to the Examiner, the specification lacks the proviso language so as to exclude SEQ ID NO: 2 from immunogenic FGF that consist of heparin binding domains claimed. The Examiner requested that applicant remove such negative limitation in the claims in response to this office action or specifically direct the Examiner to support in the specification as originally filed.

Applicants had originally entered the amendment discussed above in an effort to address the U.S.C. §102(b) and U.S.C. §103(a) rejection of Claims 5 and 6 based on Baird et al. (U.S. Patent No. 5,252,718). According to the Examiner, Baird et al. teach a peptide "that is identical to SEQ ID NO:2, wherein they further teach that the peptides are heparin binding and can be used in conjunction with pharmaceutical carriers."

A claim in a patent application is anticipated under 35 U.S.C. § 102(b) only when each and every element of the claim is disclosed by single piece of prior art. *See Glaxco Inc. v.*

Novopharm Ltd., 52 F.3d 1043 (Fed. Cir. 1995) and unlike the composition described in Claim 5, Baird et al. fail to identify **immunogenic** peptide fragments located in the heparin binding domain of FGF.

Although Baird et al. discuss FGF peptides, they only discuss **antagonistic** characteristics of such peptides. One skilled in the art would not necessarily conclude that based on the teachings of Baird et al. that such peptides are immunogenic. The discovery by the applicants herein demonstrates for the first time the novel abilities of FGF peptides to mount an immune response. Since Baird et al. fail to recite every limitation of the invention as claimed herein, Baird et al. fail to anticipate applicants' invention.

Baird et al. also fail to render obvious the invention as recited in Claim 5, because as stated above, Baird et al. only characterize and describe FGF peptides with regard to their antagonistic abilities, and one skilled in the art would not deduce, based on this teaching, that such peptides are also immunogenic.

In light of the foregoing applicants have removed the negative limitation. Nevertheless, applicants' representative look forward to discussing this amendment with the Examiner during the telephone interview scheduled for January 29, 2004 at 3:00pm (Ms. Kulkarni will call the Examiner at 571 272 0838).

Rejection of Claims 5, 7-10 and 25-29 under the judicially created doctrine of obviousness-type double patenting

Claims 5, 7-10 and 25-29 remained rejected in the October 3, 2003 Office Action under the judicially created doctrine of obviousness-type double patenting as being "unpatentable over claims 1-3, 6-8, 15-17, and 19-21 of U.S. Patent No. 5,919,459 (Nacy et al.).

In an effort to facilitate prosecution, Applicants are providing a terminal disclaimer herewith. Reconsideration and withdrawal of this rejection is therefore respectfully requested.

Correction of Inventorship

The inventor, Stacy M. Plum, was inadvertently, without deceptive intent, omitted as an originally named inventor. Applicants are including herewith a Petition to Correct Inventorship

pursuant to the requirements of 37 C.F.R. §1.48(a). The requisite processing fee is included herewith, however the statement by the inventor concerning lack of deceptive intent and the declaration by all the inventors will follow this submission.

Conclusion

In light of the amendments, Applicants are of the opinion that Claims 5-13, 15, 17-23, 25-29 and 50 are now in condition for allowance. Such action is respectfully requested. If the Examiner believes any informalities remain in the application which may be corrected by Examiner's Amendment, or there are any other issues which can be resolved by telephone interview, a telephone call to the undersigned attorney at (404) 745-2463 is respectfully solicited.

Respectfully submitted,



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